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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

No. [redacted] 205

ROBERT GRENE, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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## INDEX


| | Page |
|---|---|
| Opinions Below | 1 |
| Jurisdiction | 2 |
| Questions Presented | 2 |
| Statutes and Rules Involved | 4 |
| Statement of the Case | 4 |
| Reasons for Granting the Writ | 8 |
| Appendix A—Opinion Below | 1a |
| Appendix B—Order Denying Rehearing | 2a |
| Appendix C—Petition for Rehearing | 3a |
| Appendix D—Brief of Appellant | 6a |
| Appendix E—Order Staying Mandate | 19a |
| Appendix F—Judgment | 20a |
| Appendix G—Constitution of the United States, Fifth Amendment; Constitution of the United States Sixth Amendment; Title 18, United States Code Annotated, Section 2314; Title 18 United States Code Annotated, Section 371; Title 18, United States Code Annotated, Section 473; Title 18, United States Code, Paragraph 2 | 21a |


## TABLE OF CITATIONS

CASES:


| | |
|---|---|
| Brown v. Mississippi, 297 U.S. 78 | 9 |
| Powell v. Alabama, 287 U.S. 45 | 9 |
| Stern v. United States, 204 F. 2d 647 | 8 |
| Turinetti v. United States, 2 F. 2d, 15 | 9 |
| United States v. Hamrick, 293 F. 2d 468 | 8 |
| United States v. Hartenfeld, 113 F. 2d 359 | 9 |
| West, et al. v. United States, 113 F. 2d 168 | 10 |

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Comes now Robert Grene, petitioner herein, by and through his undersigned attorneys, and respectfully prays this Honorable Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on the 3rd day of March, 1965, and the order of the same Court denying rehearing entered on the 2nd day of April, 1965.

### OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is found in Appendix A. hereof and the advice to counsel as to the order denying rehearing is found in Appendix B. hereof.

## JURISDICTION

Jurisdiction of this Court is invoked pursuant to the provisions of Rule 37(b)(1)(2) of the Federal Rules of Criminal Procedure. The United States Court of Appeals for the Fifth Circuit rendered its opinion in this cause on the 3rd day of March, 1965, (Appendix A.), and thereafter a petition for rehearing was timely filed (Appendix C.), and thereafter the said Court entered its order denying rehearing without opinion (Appendix B.).

Petition for Extension of Time to File Petition for Writ of Certiorari was granted by an Order executed by The Honorable Hugo L. Black, extending the time for filing said petition for writ of certiorari to and including June 1st, 1965, dated on the 30th day of April, 1965.

## QUESTIONS PRESENTED

I

Whether or not the Appellant, Grene, was denied due process of law by the denial of his motion for a continuance at the time of arraignment and the holding of his trial twelve days after arraignment.

II

Whether or not the Government having elected in the Indictment, and by the proof offered thereunder, to charge the Appellant Grene under the first paragraph of Section 2314 of Title 18, must prove value as required by that section.

III

Whether or not the Appellant Grene was properly convicted of transporting goods of the value of $5,000 when no proof whatever of value was adduced at the trial.

IV

Whether or not the Appellant Grene was denied due process of law when the trial judge permitted the witness, Savage, to testify as to the separate crime of forging United States Postal Money Orders (the charge for which had been severed) and denied Defense Counsel's Motion for a Mistrial.

V

Whether or not the Appellant Grene was denied due process of law when the Trial Court permitted him to be tried under an Indictment charging that Appellant Grene conspired to "transport and cause to be transported" when the section of the statute under which he was prosecuted does not contain this language.

VI

Whether or not the Appellant Grene was denied due process of law by an interpretation of Section 2 of Title 18 which gives to the phrase "offense against the United States", meaning "offense against the laws of the United States".

VII

Whether or not the Appellant Grene was denied due process of law by the actions of the Trial Court throughout the trial herein.

VIII

Whether or not with respect to Counts I and II, the Government proved the Appellant Grene guilty of the charges beyond, and to the exclusion of every, reasonable doubt when the only evidence presented was purely circumstantial.

IX

Whether or not the Court committed fundamental error in failing to instruct the jury on the law regarding the weight to be afforded to the testimony of admitted accomplices.

X

Whether or not the Appellant Grene was denied due process of law by being tried under an Indictment which included charges with which he was in no way connected.

## STATUTES AND RULES INVOLVED

United States Constitution, Fifth Amendment; United States Constitution, Sixth Amendment; Title 18 United States Code Annotated, Section 2314; Title 18 United States Code Annotated; Section 473; Title 18 United States Code Annotated, Section 371; Title 18 United States Code Annotated, Section 2. Text of the same are set forth in Appendix G hereof.

## STATEMENT OF THE CASE

Your Petitioner, Robert Grene, was accused jointly with two other defendants of violating certain sections of the United States Code. The Indictment contained Nine Counts, consisting of six pages. Count I of such Indictment charged a conspiracy under Title 18, U.S.C. 371, to commit offenses against the United States, to-wit, Title 18, U.S.C. 473 and Title 18, U.S.C. 2314. Count II charged a substantive violation of Title 18, U.S.C. 473. Count III charged a substantive violation of Title 18, U.S.C. 2314. Counts IV, V, VI, VII, VIII and IX were severed and are of no application in this petition.

The Indictment charging your Petitioner was issued on July 3rd of 1963. On July 5th of 1963 a warrant for the arrest of the Appellant, Robert Grene, was issued. Your Petitioner, Robert Grene, surrendered in open court on July 10th of 1963, and was arraigned.

At this time his attorneys immediately made an oral motion for continuance, which was denied. As result thereof, no pretrial motions of any description were filed. Particularly, no Bill of Particulars was sought, so that counsel could properly prepare their defense. No motion for severance was made, even though a Bill of Particulars would have furnished such grounds. This is borne out by the Court's subsequent action in dismissing part of the Indictment against your Petitioner Grene. No attack on the validity of the Indictment was made.

Trial of the case was set and commenced twelve days later, July 22nd of 1963, terminating on July 30th of 1963.

Thereafter, a jury trial was had and evidence was presented to the jury; a more complete and thorough statement of the evidence presented to the jury is contained herein in Appendix D.

Prior to submitting the case to the jury, the Trial Court decimated portions of Count I, the conspiracy count, by dismissing that portion of such count having to do with the transport and cause to be transported in interstate and foreign commerce from New York, New York, to Miami, Florida. The Trial Court further dismissed that portion of Count I against the Petitioner Grene as to a violation of Title 18, USC 473, as there was no evidence to show that your Petitioner Grene had any knowledge of the counterfeit $100 Federal Reserve notes.

Thus, the only remaining portion of Count I, the conspiracy count, that was submitted to the jury to determine your Petitioner's guilt or innocence was that section as follows: "to transport and cause to be transported in interstate and foreign commerce from Miami, Florida to Rio de Janeiro, Brazil, stolen securities, to-wit, Travelers Express Company Money Orders payable through Clark State Bank, Clark, New Jersey, of a value of $1,000,000, which said securities were stolen on December 28th of 1962 at Jersey City, New Jersey, the defendants knowing same to have been stolen."

The Trial Court likewise dismissed Count II of the Indictment, which was the substantive count involving the violation of Title 18, USC 473.

Count III was submitted to the jury. Count IV was dismissed.

Your Petitioner Grene was found Guilty by the jury as to Count I, as submitted, and Count III, and after adjudication of guilt, was sentenced to three years on each Count, to run concurrently.

In a normal manner the cause came on for oral argument before the United States Court of Appeals, and, thereafter, the opinion of the Court, Appendix A, was entered on the 3rd day of March, 1965, and, thereafter, a Petition for Rehearing was timely filed and subsequently the Court of Appeals entered its Order denying Rehearing, without opinion, Appendix B.

Present counsel for your Petitioner did not represent Petitioner Grene at his trial; nor in the Court of Appeals. Counsel did not enter this case until Petitioner's rights were exhausted at the Court of Appeals' level. A thorough review of the Indictment leads present counsel to the inescapable conclusion that had previous counsel thoroughly read Title 18, U.S.C. 2314, which is set out in detail in Appendix G, that no conviction of your Petitioner could have resulted.

Although it is alleged that the defendants herein did, in violation of Title 18, U.S.C. 2314, commit offenses against the United States, the only explanation in the Indictment in both the conspiracy count, Count I, and the substantive Count, Count III, was that, *"and more particularly, to transport and cause to be transported in interstate and foreign commerce from Miami, Florida, to Rio de Janeiro, Brazil, stolen securities, to-wit, . . . defendants knowing same to have been stolen."*

Title 18, U.S.C. 2314 is comprised of six separate paragraphs. It is obvious from reading such section in its entirety, reading the Indictment, and reading the Judge's Instructions to the Jury, that the Government relied solely on the first paragraph, which is quoted as follows:

> "Whosoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, *of the value of $5,000 or more;*—(Emphasis supplied)—knowing the same to have been stolen, converted or taken by fraud."

At no place in the Indictment, or in the Trial Court's Instructions to the Jury is any reliance attempted by the Government upon the third paragraph of Title 18, U.S.C. 2314, which states as follows:

> "Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or."

Present counsel have searched the entire record and have found that it is an uncontested fact that the described Travelers Express Company Money Orders were stolen by person or persons unknown while in a blank form. Said money orders were transported to Miami while still in such blank form.

No evidence of any type was introduced by the Government to establish that such money orders had a value of $5,000 or more, and no other section of Title 18, U.S.C. 2314 is quoted in the Indictment or in the Instructions of the Trial Court to the Jury.

At best, the actual value of such blank stolen money orders could not have exceeded the cost that the Texas Company was charging the Travelers Express Company for furnishing such money order blanks.

All known cases are unanimous that it is imperative upon the Government to prove that the stolen goods, in this case the blank money orders, had a value of $5,000, or more. The value of transported goods is an essential element of offense charged under statute prohibiting interstate transportation of stolen goods of a value in excess of $5,000, and conviction can not be sustained in absence of proof of value. *United States* v. *Hamrick,* 293 F. 2d 468.

Under Title 18, U.S.C. 2314, the true market value to be applied is the market value at the time and place of taking. *Stern* v. *United States,* 204 F. 2d 647.

In order to sustain this conviction, it would have been necessary for the Indictment to allege sufficient facts to come under Paragraph 3, hereinbefore quoted, of Title 18, U.S.C. 2314. Likewise, Instructions to the Jury in conformity to such allegation in the Indictment should have been appropriately made.

It is the contention of current counsel that this is an illustration that trial counsel did not have sufficient time to adequately prepare their case in accordance with trial counsel's representation to the Court at the time of arraignment, and that, if trial counsel had had adequate time for a thorough review of the Indictment and of the Federal laws under which such Indictment was drawn, proper motions could have been made so that your Petitioner would have had a trial which would have protected him from double jeopardy at a subsequent time.

Petitioner likewise refers this Honorable Court to the other issues which have been raised under the caption, "Questions Presented."

## REASONS FOR GRANTING THE WRIT

It is respectfully submitted that the writ sought by the Petitioner should be granted for the reason that the Constitution of the United States, specifically, the Sixth Amendment, nowhere specifies any period of time which

must intervene between the required appointment of counsel and trial. Many cases, including several decisions of this Court, have held that under certain circumstances a defendant was denied his Constitutional rights when the interval of time between appointment of his counsel and trial was a minimal length of time. *Powell* v. *Alabama*, 287 U.S. 45; *Brown* v. *Mississippi*, 297, U.S. 78; *Turinetti* v. *United States*, 2 F. 2d, 15.

Likewise, in many cases, Circuit Courts of Appeal have made varying decisions, such as sixty days is sufficient time for counsel to prepare a defense. *United States* v. *Hartenfeld*, 113 F. 2d, 359.

The Court of Appeals' decision in the case at bar held below:

> "In the absence of any showing of prejudice resulting from the holding of trial twelve days after arraignment, we can determine that the Trial Court erred in denying the Motion for Continuance."

It is Petitioner's contention that the prejudice is demonstrated from the record in that:

1. A Motion for a Continuance was made at the time of arraignment. This motion was denied. As a result thereof, the Defendant had to secure counsel almost immediately without an opportunity to select counsel experienced in trial of cases of this nature. Furthermore, the counsel he did retain was also counsel for another defendant. In all cases of conspiracy, there is bound to come a point in the trial where a conflict of interest will arise.

2. No preliminary motions of any type were filed, thus allowing a jury to listen to evidence of other crimes in determining the guilt or innocence of your Petitioner. This was not cured by the trial courts dismissing certain portions of Count I and dismissing Count II.

3. Counsel did not have time to adequately prepare their case and study all the decided cases in a complex field of law. (See facts stated in Statement of the Case.)

It is respectfully submitted that the writ sought by your Petitioner should be granted for the reasons stated by the Fifth Circuit of *West, et al* v. *United States,* 113 F. 2d 168, is in direct conflict with the Order of the Fifth Circuit in the case at bar in denying Petitioner's Petition for Rehearing, without opinion. This decision held:

> "It is well settled that in the Courts of the United States a conviction may be sustained by the evidence of an accomplice, but the judge should charge the jury as to the weight to be given to the testimony."

It is respectfully submitted that the writ sought by your Petitioner should be granted for the reasons that the decisions of the Fifth Circuit of several cases cited in Paragraph 3 of Petitioner's Petition for Rehearing, Appendix C herein, are in direct conflict with the Order of the Fifth Circuit in the case at bar in denying Petitioner's Petition for Rehearing, without opinion (Appendix B).

It is respectfully submitted that the writ sought by your Petitioner should be granted for the adidtional reason covered in Paragraph 2 of Petitioner's Petition for Rehearing in the Court of Appeals (See Appendix "C" herein), as the decision of the Fifth Circuit in the case at bar is in conflict with cases there cited.

It is further respectfully submitted that the Fifth Circuit erred in its Order, in its Opinion, (Appendix A.), in deciding the points more fully raised in the brief attached herein and made a part of the writ for certiorari as Appendix D.

It is, therefore, respectfully submitted that the United States Court of Appeals for the Fifth Circuit did err in the entry of the opinion herein and in the order denying

the petition for rehearing herein without opinion, and that the writ herein sought should be issued and the decision of the Fifth Circuit of the United States Court of Appeals be reversed.

Respectfully submitted,

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